

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ETIENNE BARKSDALE,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
et al,
Defendants.

C.A. No. 23-263 Erie

**District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo**

MEMORANDUM ORDER

Plaintiff, Etienne Barksdale, initiated this civil rights action by lodging a *pro se* complaint on August 31, 2023, without paying the filing fee or filing a motion to proceed *in forma pauperis* (“ifp motion”). Plaintiff subsequently filed an ifp motion on September 12, 2023, which was granted by Order dated October 24, 2023. [ECF No. 5]. At that time, Plaintiff’s complaint was docketed, along with a motion for preliminary injunction and temporary restraining order (“injunction motion”) [ECF No. 8], which accompanied the complaint. The matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Plaintiff’s injunction motion seeks an Order directing Defendants to “stop using [OC] Spray on him due to him being asthmatic and at risk of suffering from a serious bodily injury and/or death” until his underlying claims are litigated. [ECF No. 8].

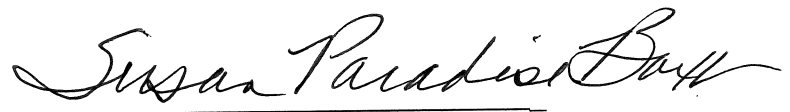
On November 8, 2023, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that Plaintiff’s motion for temporary restraining order

be denied because Plaintiff has failed to demonstrate either an imminent risk of irreparable injury or a substantial likely of success on the merits, and that Plaintiff's motion for preliminary injunction be deferred pending service of his complaint and motion upon Defendants. [ECF No. 13]. Objections to the R&R were due to be filed by November 27, 2023; however, no timely objections have been filed.

Thus, after *de novo* review of Plaintiff's motion and relevant documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 12th day of December, 2023,

IT IS HEREBY ORDERED that Plaintiff's motion for preliminary injunction and temporary restraining order [ECF No. 8] is DENIED to the extent the motion seeks a temporary restraining order and is DEFERRED as to Plaintiff's motion for preliminary injunction pending service of Plaintiff's complaint and motion upon Defendants. The report and recommendation of Chief Magistrate Judge Lanzillo, issued November 8, 2023 [ECF No. 13], is adopted as the opinion of the court.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge